GUANNEX LEASING SDN BHD

v.

SIN FATT BROTHERS CONSTRUCTION & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL AZIZ MOHAMAD J
[SUIT NO: C24-1618-1986]
1 MARCH 2002

CIVIL PROCEDURE: *Jurisdiction - Limitation period - Cause of action on contract statute barred - Limitation Act 1953, s. 6(1)(a) - Whether appellants may recover costs*

LEGAL PROFESSION: *Remuneration - Bill of costs - Taxation under Part IX of Legal Profession Act 1976 to recover costs - Claim statute barred - Limitation Act 1953, s. 6(1)(a)*

The appellant solicitors appealed against the decision of the learned senior assistant registrar in dismissing the appellants' notice of taxation and bill of costs for taxation against the plaintiff. The appellant solicitors had brought this action to recover costs from the plaintiff for services rendered whilst being engaged as the plaintiffs' solicitors.

Held:

[1] Applying s. 6(1)(a) of the Limitation Act 1953, an action founded on contract shall not be brought after the expiration of six years from the date on which the cause of action accrued, namely on 29 July 1988 which was the date when the appellants delivered to the plaintiffs their bill of costs. (p 434 f-g)

[2] The appellants had two ways in which to recover their costs. One was to bring a suit. The other was to resort to taxation under Part IX of the Legal Profession Act 1976. Taxation of a bill of costs is an "action" as defined in s. 2 of the Limitation Act 1953. If the appellants chose to resort to taxation, they should have brought the taxation proceedings before 29 July 1994. (pp 434 h-i & 435 a)

[3] The appellants only filed in this action, their notice of taxation eight years later, ie on 31 July 1997. That was three years after the cause of action on the contract had become statute barred. It was also for this reason the learned senior assistant registrar had earlier dismissed the notice of taxation. (p 435 e)

[Appeal dismissed with costs.]

Case(s) referred to:
Coburn v. Colledge [1897] 1 QB 702 ***(refd)***

Legislation referred to:
Court of Judicature Act 1964, s. 3
Legal Profession Act 1976, s. 126(3), 135, part IX
Limitation Act 1953, ss. 2, 6(1)(a)
Rules of the High Court 1980, O. 59

For the appellant - Mithran Poobalan; M/s Dass, Jainab & Assocs
For the plaintiffs - Victoria Martin (EL Loo); M/s Raja, Darryl & Loh

Reported by M Maheswaran

JUDGMENT

Abdul Aziz Mohamad J:

The appellant solicitors had been engaged by the plaintiffs to perform work for them in connection with this action, which was discontinued on 7 October 1986. The engagement of the appellant solicitors must be construed as constituting a contract for services for which the plaintiffs agreed to pay.

On 29 July 1988 the appellants delivered to the plaintiffs their bill of costs.

According to *Coburn v. Colledge* [1897] 1 QB 702, the cause of action on the contract, for the recovery of costs, accrued when the appellants' work was completed. The work must have been completed before 29 July 1988, perhaps on 7 October 1986, but the point was not dealt with in submission. It would make no difference to the dispute in this appeal, as it did make a difference in *Coburn v. Colledge*, if we took the work as having been completed on 29 July 1988, the date when the bill of costs was delivered.

Applying s. 6(1)(a) of the Limitation Act 1953, an action founded on the contract shall not be brought after the expiration of six years from the date on which the cause of action accrued, namely 29 July 1988. So if the appellants wanted to bring an action on the contract to recover their costs, they must do it before 29 July 1994, otherwise the action will be barred by s. 6(1)(a). Section 2 of the Act defines "action" as including "a suit or any other proceeding" in a court of law.

As learned counsel for the appellants said, the appellants had two ways in which to recover their costs. One was to bring a suit. The other was to resort to taxation under Part IX of the Legal Profession Act 1976. Taxation of a bill of costs is a "proceeding" under O. 59 of the Rules of the High Court 1980, which terminates, according to s. 135 of the Legal Profession Act 1976, in a case where the retainer is not disputed – and it is not in this case – with "an order that judgment be entered for the sum certified to be due with costs". It is therefore an "action" as it is defined in s. 2 of the Limitation Act 1953.

Therefore, if the appellants chose to resort to taxation they must bring the taxation proceeding before 29 July 1994. With respect, I am unable to agree with learned counsel for the appellants that "proceeding" in the definition of "action" in the Limitation Act 1953 must be an originating proceeding because of the word "commenced" in the definition of "action" in s. 3 of the Courts of Judicature Act 1964. The definition in that Act is for the interpretation of that Act only. That point arose because the proceeding that the appellants were to bring was brought within this action and so was not an originating proceeding.

On 12 April 1989, M/s Yusuf Lee Pathma and Marbeck ("YLPM"), then acting for the plaintiffs, wrote to the appellants as follows:

> We are instructed by Guannex Leasing Sdn Bhd to take over conduct of the list of files enclosed herewith from your goodselves.
>
> Kindly forward us all relevant correspondences, cause papers and documents should you have no objections to our taking over conduct of the same. We undertake to pay the taxed costs.

It was only eight years later, on 31 July 1997, that the appellants filed in this action their notice of taxation and bill of costs for taxation pursuant to O. 59 and s. 126(3) of the Legal Profession Act 1976. That was three years after the cause of action on the contract had become statute-barred. For that reason, the learned senior assistant registrar dismissed the notice of taxation. Thus this appeal.

I ought to explain that s. 126(3) that was mentioned in the notice of taxation and the bill of costs empowers the registrar to proceed to taxation without an order for taxation that is to be obtained by a solicitor or the client under subsection (1), where both consent to taxation.

The appellants' case on this appeal is based on the letter of YLPM dated 12 April 1989. Their case is that when the appellants forwarded the cause papers to YLPM pursuant to that letter, a new separate contract was formed between the appellants and the plaintiffs whereby the plaintiffs promised to pay the appellants their costs when they had been taxed, so that the plaintiffs would not be liable to pay the costs until they have been taxed and therefore the appellants' cause of action would only accrue when the bill has been taxed.

With respect, I am unable to agree that the letter, coupled with the forwarding of the documents by the appellants, constituted a separate new agreement. In giving on behalf of the plaintiffs the undertaking to pay the taxed costs, YLPM were only giving an assurance to encourage the appellants to forward the documents, the assurance being that when, upon taxation, judgment is entered

for the costs certified to be due, the plaintiffs will surely pay and will not try to evade payment. The assurance must be construed as being given with the knowledge on both sides that the cause of action for the costs had already accrued. It is illogical to say that the cause of action would arise only when taxation has been done and therefore the appellants would have six more years to bring an action to sue for the costs, when the fact is that the taxation would end with a judgment for the costs, so that there will be no need for a cause of action to accrue then as there will no longer be any need to bring an action to recover the costs. The taxation would have been done on the basis that a cause of action for the costs had already accrued.

Accordingly I dismiss the appeal with costs.